

RABINOWITZ, LUBETKIN & TULLY, LLC

293 Eisenhower Parkway, Suite 100

Livingston, NJ 07039

(973) 597-9100

Jay L. Lubetkin

Counsel to Mad River Development LLC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.

Case No. 23-13359 (VFP)

Chapter 11

Jointly Administered

**AMENDED OBJECTION OF MAD RIVER DEVELOPMENT LLC TO THE
PROPOSED CURE AMOUNT IDENTIFIED BY DEBTORS IN THE NOTICE
CONSTITUTING DOCUMENT 714 RESPECTING LEASE BETWEEN
BED BATH & BEYOND INC. AND MAD RIVER DEVELOPMENT LLC**

Mad River Development LLC (the “Landlord”), by and through its attorneys, Rabinowitz, Lubetkin & Tully, LLC, hereby files its amended Objection to the Notice of the proposed cure amount submitted by the Debtors, respecting the lease between the Landlord and Bed Bath & Beyond Inc. (the “Debtor”), and respectfully shows as follows:

1. The Landlord and the Debtor are parties to a lease agreement dated October 29, 2004 respecting the premises located at 404 Route 3 West, Clifton, New Jersey (the “Lease”). A copy of the Lease and subsequent Amendment to the Lease was attached to the Landlord’s initial Objection, constituting document number 744 on the Docket.

2. Pursuant to the provisions of the Lease, in addition to the Debtor’s obligation to pay fixed rent, the Debtor is also obligated to pay real estate taxes, common area maintenance (“CAM”) charges, and attorney’s fees in any proceeding in which the Landlord is successful.

3. On May 1, 2023, in the ordinary course of the Landlord's business, the Landlord submitted to the Debtor its reconciliation of CAM and insurance charges and property taxes.

4. Pursuant to that billing, the Debtor owes \$29,138.47 in CAM charges and \$12,730.64 in real estate taxes, for an aggregate amount of \$41,869.11.

5. A copy of the billing respecting such charges was attached to the Landlord's initial objection.

6. No portion of the amounts set forth on the billing have been paid by the Debtor as of the filing of this Amended Objection.

7. On June 13, 2023, the Debtor filed its Notice to Contract Parties to Potentially Assume Executory Contracts and Unexpired Leases which, *inter alia*, identified what the Debtor asserts is the cure amount associated with the various leases which may be the subject of a subsequent assumption and assignment request.

8. As concerns the Lease between the Debtor and the Landlord, the Notice indicates no cure amount whatsoever is purportedly due and owing from the Debtor to the Landlord.

9. As set forth above, as of the filing of the Landlord's initial Objection, there is a cure amount due and owing to the Landlord from the Debtor for the full amount of the May 1, 2023 billing for CAM charges and property taxes of \$41,869.11.

10. In accordance with the provisions of the Lease, the Landlord also asserts that the cure amount must include additionally, the attorney's fees Landlord incurred in the Debtor's bankruptcy proceeding. As of today's date, those fees are in the amount of approximately \$10,731.94.

11. To the extent the Debtor seeks Bankruptcy Court approval to assume and assign the Lease at any period of time from and after July 1, 2023, the Landlord reserves its right to

further amend its Objection to the Debtor's assertion of a cure amount to the extent of any unpaid rent and other charges which may become due and owing under the Lease arising for periods of time from and after July 1, 2023, together with attorney's fees incurred by the Landlord on and after today's date. The Landlord also reserves all other potential objections to the assumption and assignment of the Lease.

WHEREFORE, Mad River Development LLC respectfully requests entry of a Bankruptcy Court Order determining the cure obligation due and owing by the Debtor to Mad River Development LLC as of the filing of the within Objection to be in the amount of \$52,601.51.

Respectfully submitted,

RABINOWITZ, LUBETKIN & TULLY, LLC
Counsel for Mad River Development LLC

Dated: June 26, 2023

By: /s/ Jay L. Lubetkin
JAY L. LUBETKIN